

Industry Circular



Internal Revenue Service
Alcohol, Tobacco, and Firearms Division
Washington, D.C. 20224

Industry Circular 70-10

February 6, 1970

APPLICABILITY OF STANDARDS OF FILL AND NEUTRAL SPIRITS LABELING
REQUIREMENTS TO FLAVORED DISTILLED SPIRITS WHICH ARE IDENTIFIED
IN 27 CFR 5.22 AS CLASS 9.

Bottlers and Importers of
Distilled Spirits and to
others concerned:

Purpose

The purpose of this circular is to alert industry members to the apparent applicability of the standards of fill provisions of the distilled spirits labeling regulations (27 CFR 5.47(a)) to "flavored brandy", "flavored gin", "flavored rum", "flavored vodka", and "flavored whisky" and to the applicability of the regulations (27 CFR 5.39(a)), requiring the disclosure of the presence of neutral spirits on labels for "flavored gin" and "flavored vodka".

Background

Following public hearing on April 1, 1968, the distilled spirits labeling regulations were amended (by T.D. 6973) to provide standards of identity for "flavored brandy", "flavored vodka", "flavored gin", "flavored rum", and "flavored whisky". These standards became effective July 1, 1969.

Prior to the adoption of these standards, these products were regarded as "cordials" or "liqueurs" (if they contained 2-1/2% or more by weight of sugar) or as "specialties". In either case, these products were not required to be packaged in containers conforming to standards of fill prescribed by regulation since the standards of fill are not applicable to cordials or liqueurs or specialties, (please see Section 5.49(b)). Similarly, since such products were "cordials" or "liqueurs" or "specialties", they were not subject to the statutory requirement regarding disclosure of the presence of neutral spirits.

However, with the promulgation of the new standards of identity (Class 9), effective July 1, 1969, it would appear inappropriate to regard these products as "cordials" or "liqueurs" (since they were not included within the standard for "cordials" or "liqueurs"), and since these flavored products are defined by standard, it appears they are no longer specialties.

Since these flavored products are not "cordials" or "liqueurs" by definition, and as the standardization of these products appears to remove them from classification as specialties, they appear to have lost their status of being exempt from standards of fill and from the neutral spirits label disclosure requirement.

These aspects of the matter were not considered at the April 1, 1968, public hearing on the then proposed standards of identity for these products. Recently, some segments of the industry have expressed considerable concern over the application of standards of fill to these products in view of the fact that they have been marketed in non-standard bottles for considerable periods of time. On the other hand, other segments of the industry who are marketing these products have supported the position that the standards of fill should be made applicable.

Some industry members feel that an administrative disposition of this matter is possible. They have been encouraged to file briefs supporting their views. Some members feel action can be definitely postponed. However, this course cannot be justified. If no sound administrative solution is found, it would appear desirable to hold a public hearing to afford all interested parties opportunity to be heard. If a hearing on this matter should be held, it would appear that consideration might be given to the following issues:

1. Should these flavored distilled spirits products be reclassified as types of cordials or liqueurs?
2. Should the regulations (27 CFR 5.48(b)) be amended to specifically exclude these flavored products from standards of fill -- making unnecessary any changes in their classification?
3. Should the regulations (27 CFR 5.48(b)) be amended to include additional sizes which are not deceptive in relation to existing standards of fill, and delete the existing exception with regard to "cordials and liqueurs, and cocktails and highballs, bitters and such other specialties as are specified by the Director" -- thus making all of these products subject to standards of fill? Such action would seem to be consistent with the legislative intent in the Federal Fair Packaging Act to discourage needless proliferation of sizes.
4. Should the regulations remain as they are thus making these flavored products subject to standards of fill and (where applicable) to the label disclosure of neutral spirits contained therein?

Note: Citations to regulations herein are those of the revised regulations reissued by T.D. 7020. For sake of convenience, the new citations are related to the old as follows:

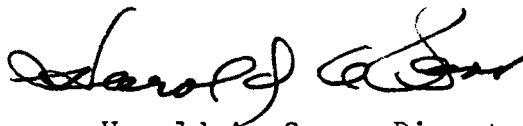
<u>New Citation</u>	<u>Old Citation</u>
5.39(a)	5.38(a)
5.47(a)	5.73(a)
5.48(b)	5.74(b)

Industry members and others who wish to express their views on the treatment of this problem, or on the need for holding a public hearing on any one of these issues are free to do so. Their views would be welcomed to assist us in determining the course of action to be taken.

Conclusion

Bottlers and importers of "flavored brandy", "flavored gin", "flavored rum", "flavored vodka", and "flavored whisky" and all others who wish to express themselves in relation to any one of the issues set forth above are invited to do so. Proponents of any one of these issues should address their petitions to the Director, Alcohol, Tobacco and Firearms Division, Internal Revenue Service, Washington, D. C. 20224 (Attention: CP:AT:B) as soon as possible but not later than March 31, 1970.

Pending resolution of this matter, the National Office will continue issuing certificates of label approval covering labels for these products. However, such actions shall not be construed as indicating the ultimate disposition of the problem.

A handwritten signature in dark ink, appearing to read "Harold A. Serr", is positioned above the typed name.

Harold A. Serr, Director
Alcohol, Tobacco and Firearms Division